RECENT IMPORTANT DECISIONS

ADJOINING LANDOWNERS — EXCAVATIONS — "CONTIGUOUS" STRUCTURES.— Action to recover damages for an injury to the plaintiff's building due to the act of defendant in excavating to a depth of more than ten feet without protecting the plaintiff's wall. A section of the building code provides, that if an excavation goes below ten feet it shall be the duty of the party excavating to preserve any adjoining or contiguous wall or structure from injury. The excavation was five feet away from the building damaged. *Held,* that the word contiguous contemplates nearness, but with intervening spaces; and that within the meaning of the city ordinance, any building is contiguous which is near enough to be disturbed by the excavation. *Baxter* v. *York Realty Co.* (1908), 112 N. Y. Supp. 455.

The judge rendering the opinion in the principal case remarked that the referee had entered into a careful consideration of the history of this ordinance, and so the spirit of this particular ordinance may have warranted this construction of the term "contiguous." In view of the fact that this is a statute in derogation of the common law and therefore to be strictly construed, and in view of the definition given in other cases the construction of the term in the principal case appears quite broad. The common law rule is that a man has a right to lateral support for his land from the adjacent land of other proprietors; but this rule does not extend to houses, or other artificial structures thereon erected which increase the lateral pressure on the adjacent land. *Moody* v. *McClelland,* 39 Ala. 45; *Thurston* v. *Hancock,* 12 Mass. 221; *Gilmore* v. *Driscoll,* 122 Mass. 199; *Charless* v. *Rankin,* 22 Mo. 566; *Transportation Co.* v. *Chicago,* 99 U. S. 635; contiguous means in close proximity; in actual close contact. BOUVIER'S DICTIONARY. Contiguous property, in relation to a street, within the meaning of a statute, is the property which abuts on the street. *County of Adams* v. *City of Quincy,* 130 Ill. 566. Contiguous means to touch or to be in actual contact. *Bolen Coal Co.* v. *Ryan,* 48 Mo. App. 512. Contiguous means touching sides; adjoining; adjacent. *Lynn County Bank* v. *Hopkins,* 47 Kan. 580. Contiguous when used in a policy of fire insurance means in actual close contact. *Arkell et al.* v. *Commerce Co.,* 69 N. Y. 191. Contiguous means in actual contact or touching. *Holston S. & P. Co.* v. *Campbell,* 89 Va. 396.

ALIENS—NATURALIZATION—PERSONS OF JAPANESE RACE—"WHITE PERSONS."—A Japanese, holding a certificate of honorable discharge from the regular army of the United States, petitioned the court for admission to citizenship by naturalization. *Held,* Congress has not extended to Japanese people not born in the United States the privilege of becoming adopted citizens of this country. *In re Buntaro Kumagai* (1908), — D. C., W. D., Wash., N. D. —, 163 Fed. 922.

In the year 1862 (Act of July 17, 1862, ch. 200, 12 Stat. L. 597, Fed. Stat. Annot., Vol. 5, p. 205, R. S. of U. S., § 2166) Congress enacted a law in recog-

nition of the military service of aliens who should be honorably discharged from the service of this country, and as amended (Act of Feb. 18, 1875, ch. 80, 18 Stat. L. 318, Fed. Stat. Annot., Vol. 5, p. 207, R. S. of U. S., § 2169) the provisions of the act were confined to "aliens being free white persons and to aliens of African nativity and to persons of African descent." The policy of our government in regard to the naturalization of aliens has been to limit the privilege of naturalization to white persons, and the only distinct departure was in regard to the negro at the close of the Civil War. A native of Mexico is eligible to American citizenship whatever may be his status from the standpoint of the ethnologist. *In re Rodriguez,* 81 Fed. 337. However, a native of the Hawaiian Islands was in 1889 held ineligible for naturalization as belonging to the Malay race. *In re Kanaka Nian,* 6 Utah 259. So an Indian born in British Columbia was refused naturalization. *In re Burton,* 1 Alaska 111. And a person whose father was a white Canadian and his mother an Indian woman was held barred by the statute. *In re Camille,* 6 Fed. 256. Mongolians and persons belonging to the Chinese race are not open to naturalization. *Fong Yue Ting* v. *United States,* 149 U. S. 716; *In re Ah Yup,* 5 Sawy. 155; *United States* v. *Wong Kim Ark,* 169 U. S. 649; *In re Gee Hop,* 71 Fed. 274; *In re Hong Yeng Chang,* 84 Cal. 163. In regard to the Japanese it has been held before that under our naturalization laws they are ineligible to citizenship. *In re Saito* (1894), 62 Fed. 126; *In re Yamasshita* (1902), 30 Wash. 234. To quote from DEADY, J., in *In re Camille* (supra), "There is this to be said in excuse for this seeming inconsistency: the negroes of Africa were not likely to emigrate to this country, and therefore the provision concerning them was merely a harmless piece of legislative buncombe, while the Indian and Chinaman were in our midst and at our doors and only too willing to assume the mantle of American sovereignty, which we so ostentatiously offered to the African, but denied to them."

BANKRUPTCY—SUIT BY TRUSTEE—RECOVERY OF PROPERTY TRANSFERRED BY BANKRUPT.—I, trustee of the C.-E. Co., a mercantile corporations in N. Y. against which involuntary proceedings in bankruptcy had been filed, brought an action against a Trust Company under §§ 60 b and 67 e of The Bankruptcy Act of July 1, 1898, c. 541, and also under § 48 of the Stock Corporation Law of New York (Laws 1892, p. 1838, c. 688) to recover moneys placed on deposit with the Trust Co. The defendant had in its possession certain notes then due, certain demand notes, and a note not yet due when the bankruptcy proceedings had begun, all of which were charged against the deposit within four months of the time of the bankruptcy proceeding. The assets of the insolvent company were entirely insufficient to meet its liabilities. *Held,* that while the payments were voidable under both § 48 of the state Stock Corporation Law and § 67 e of the Bankruptcy Act, supra, the trustee could recover the same only to the extent of the note which was not yet due, since as to the demand notes the bank had a lien or right of set-off which it could exercise against the bankrupt or its trustee. *Irish* v. *Citizens' Trust Co.* (1908), — D. C., N. D., N. Y. —, 163 Fed. 880.